

Docket JP919990715US1 **BEST AVAILABLE COPY**Appl. No.: 09/438,645
Filed: November 12, 1999**REMARKS****1. Acknowledgment**

Applicant gratefully acknowledges that the present Office action, dated October 21, 2004, is non-final.

2. Status

Claims 2-6, 10, 12-18 and 22 and 27-28 were examined and rejected in the present Office action. Claims 2-6, 10 and 12-16 stand rejected under 35 U.S.C. 102(e) as being unpatentable over U.S. patent 6,363,477 ("Fletcher"). Claims 17-18 and 22 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Fletcher in view of U.S. patent 6,446,028 ("Wang").

3. Summary of present reply

To overcome the rejection and more clearly set out patentable distinctions of the present invention, Applicant herein amends independent claims 2 and 10. Dependent claims 3, 5, 6, 12-14, 16-18 and 22 are also amended to conform them to the amendments of claims 2 and 10. Further, Applicant herein submits new claims 28 and 29.

4. The amended independent claims

Specifically, claim 2 is herein amended to state that the method includes:

(a) emulating a plurality of individual client computing stations by a client emulation server, . . .

(b) forming, on the client emulation server, a workload execution definition file referencing a first collection of a number of live maps, . . .

(d) reading, in response to the workload execution definition file by a number X of instances of a map sender program running on the client emulation server, the first collection of live maps;

(e) transmitting, a number of instances of the collection of live maps to the tested server as a processing load by the respective map sender program instances, so that the number of transmitted instances of the collection of live maps corresponds to the number X of instances of the map sender program;

...
(g) changing, by the client emulation server, the first collection of live maps and the number X of instances of map sender programs to a number Y, in order to selectively vary processing loads of the tested server, . . .

(h) reading the changed collection of live maps by the Y instances of the map sender program;

(i) transmitting, by the Y instances of the map sender program, a next processing load from the client to the server, so that the next processing load includes Y instances of the changed collection of live maps; and

(j) repeating said measuring step (f) for the next processing load.

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Other language is amended in claim 2 to conform the claim to the above changes. Also other language in claim 2 is amended to remove certain details of time stamping that have been moved to a new, dependent claim 28. Likewise, claim 10 is herein similarly amended, according to the form of the invention set out in claim 10, and certain language in claim 10 is moved to a new, dependent claim 29.

5. No new matter

No new matter is added herein because the original specification provides support for the amendment. See present specification, page 5, lines 33-35 (emulating a plurality of individual client computing stations by a client emulation server); page 7, lines 1-4 (forming, on the client emulation server, a workload execution definition file 506 referencing a first collection of a number of live maps 510), also, page 8, line 16 - page 9, line 3 (showing name of live maps in third field); page 7, lines 5-8 (reading, in response to the workload execution definition file by a number X of instances of a map sender program running on the client emulation server, the first collection of live maps, and transmitting a number of instances of the collection of live maps to the tested server as a processing load by the respective map sender program instances, so that the number of transmitted instances of the collection of live maps corresponds to the number X of instances of the map sender program); page 6, lines 24-25, page 9, line 21-22 and page 11, 1 - 17 (changing, by the client emulation server, the first collection of live maps and the number X of instances of map sender programs to a number Y, in order to selectively vary processing loads of the tested server, and repeating the reading, transmitting and measuring).

Language from claims 2 and 10 has been moved to claims 28 and 29, so no new matter is added for this. The language of claims 28 and 29 is slightly different than the previous language in claims 2 and 10 in that claims 28 and 29 explicitly point out that a *record* of a live map is time stamped. No new matter is added for this because the original specification provides support for the amendment. See present specification, page 9, line 25 - page 10, line 35 (collection of records, which may represent reply maps, where the records are time stamped and the records have references to the live map files in the third field).

6. Patentable distinctions

Applicant contends that the amendments submitted herein clarify the invention and patentably distinguish it from the cited art for at least the following reasons. The cited art does

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not teach or suggest emulating clients by a client emulation server, reading a collection of live maps in response to a workload execution definition file by X map sender program instances running on the client emulation server, correspondingly transmitting X instances of the collection of live maps to the tested server as a processing load, and then changing the collection of live maps and the instances of map sender programs to a number Y in order to selectively vary processing loads of the tested server, followed by reading the changed collection, sending Y instances of the changed collection and repeating the measuring. At least for this reason, amended claims 2 and 10 are patentable over the cited art.

Also, the present Office action contends Fletcher teaches forming a first collection of live maps, wherein the chosen computing application of the transaction for such a live map is the same for each of the live maps in the collection, as claimed in claims 2 and 10 of the present application. However, Applicant contends Fletcher merely teaches that data packets are sent between computers in the context of applications, not that a collection of packets is formed, where all the packets in the collection are for the same application. Applicant contends claims 2 and 10 are also patentable over the cited art for this reason.

Further, claims 3-6, 12-18 and 22 and 27-28 are allowable at least because they depend on respectively allowable independent claims. MPEP 2143.03 ("If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious," citing *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)).

Also, claims 27 and 28 state that the client emulation server time stamps a record of a transaction before transmitting a processing load to the tested server, and a reply map (such as shown on pages 9 and 10 of the specification) includes tested server processing time measured by the tested server, so that the client emulation server is able to compute elapsed time from a client perspective and compare ones of the client-perspective elapsed times to ones of the tested server processing times for specific ones of the application layer transactions to determine tested server and network latency. Fletcher does not teach that the client and the server both time stamp a transaction. See Fletcher, col. 12, line 40 - col. 13, line 30 (discussing measuring transit times between points A and B, or points D and E, or round trip from point A to C and back to A in FIG. 8, and transit times T3 and T3 or T1 and T4 in FIG. 3). Applicant contends claims 27 and 28 are also patentable over the cited art for this reason.

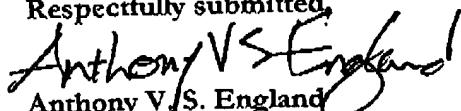
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Applicant contends that the invention, as claimed according to amendments submitted herein, is patentably distinct from the cited art, and requests that the claims be allowed and promptly passed to issuance.

Attorney can be contacted at the telephone number below, or Examiner may wish to contact Attorney by e-mail at the address below if necessary to schedule a telephone call.

Respectfully submitted,



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